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SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1952**

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# No. 386

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FRANCISCA DE GUIA, BEATRIZ B. PALMARES, PAULINO LORENZO AND RAYMUNDO F. NAVARRO,
*Petitioners,*

*vs.*

THE UNITED STATES

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**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS**

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ERNEST SCHEIN,
HENRY M. KANNEE,
*Counsel for Petitioners.*

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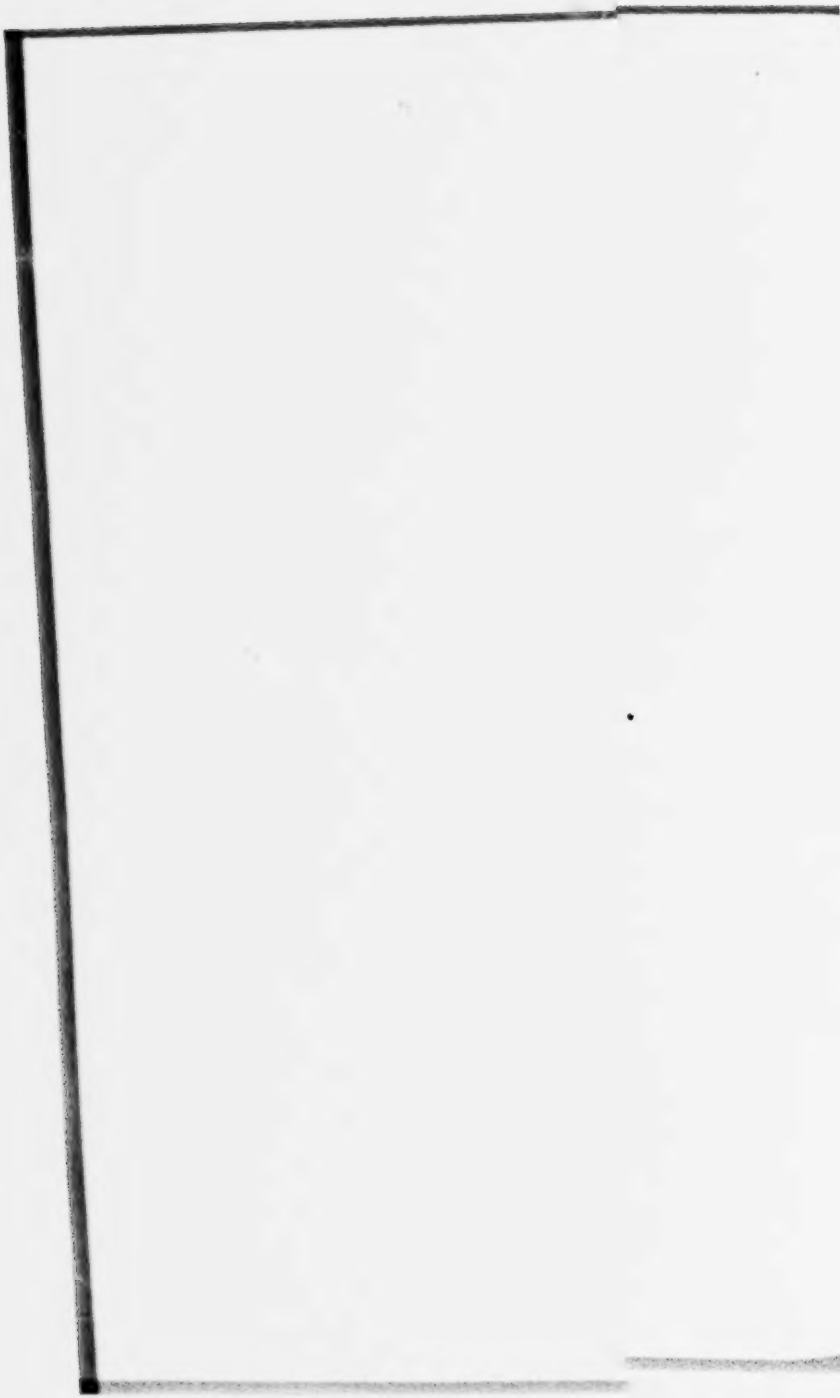

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## PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

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Petitioners, Francisca de Guia and Beatriz B. Palmares, Paulino Lorenzo, and Raymundo F. Navarro, pray that a writ of certiorari issue to review the decisions and orders entered by the United States Court of Claims on February 5, 1952, and July 15, 1952, in the above entitled causes.

### Opinions Below

The opinions of the Court of Claims, Nos. 50342 (R. 4), 50357 (R. 8), and 50358 (R. 12), are not yet officially reported.

### Jurisdiction

The judgments of the Court of Claims were entered February 5, 1952 (R. 5, 9 and 13). Motions for rehearing

were overruled on July 15, 1952 (R. 14). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1255.

**Statutes Involved**

The applicable portions of the statutes involved are set forth in the Appendix, *infra*, p. 14.

**Questions Presented**

1. Whether wartime suspension of the six-year Statute of Limitations (28 U.S.C. 2501), which delimits suits in the United States Court of Claims, was lifted by the formal surrender of Japan on September 2, 1945, insofar as such suspension applied to the Philippine Islands and all Filipinos.

2. Whether obligations, incurred under conditions of war which deferred, for an indefinite period, determinations as to debtor, amount, and time of payment, accrued "during the period of wartime suspension of the Statute of Limitations", as held by the Court of Claims (R. 4, 8 and 12), or at the time such determinations were made by the United States Army Claims Service, set up for that purpose.

3. Whether or not the First War Powers Act of 1941 (Act Dec. 18, 1941, Ch. 593, 55 Stat. 838), insofar as it authorized the modification, amendment or settlement of claims, was a statutory provision having the effect of tolling the Statute of Limitations during the time such claims were pending before the Army Claims Service in the Philippine Islands.

**Statement**

These three cases arose from obligations incurred when petitioners supplied armed forces opposing the Japanese in the Philippine Islands during World War II with watercraft, supplies, and currency.

Following war's cessation, each of the petitioners sub-

mitted a claim to the United States Army Claims Service; thereafter each of the claims was disallowed by that Service.

Petitions in all three cases were filed in the United States Court of Claims. (De Guia & Palmares, Oct. 2, 1951; (R. 1) Lorenzo (R. 5) and Navarro (R. 9), Oct. 12, 1951.

Respondent, The United States, in each case filed a motion to dismiss on the ground that the Statute of Limitations had run (R. 3, 7 and 12).

The motions were heard and considered together, identically worded judgments dismissing the petitions were entered on the same date, February 5, 1952 (R. 5, 9 and 13), and a single order of the Court of Claims overruled petitioners' motions for a new trial on July 15, 1952 (R. 14).

All three cases involved the same questions of law, all relating to the application of the Statute of Limitations.

The Court of Claims found, in all three cases (R. 4, 8, and 12), that the arguments presented by the parties were identical with those discussed in *Ferdinand E. Marcos* v. *United States*, No. 50278, 102 F. Supp. 554, and *Flaviana Tan* v. *United States*, No. 50277, 102 F. Supp. 552, decided on the same day, July 15, 1952, and held that the conclusions stated in those cases were controlling as to the three cases of petitioners.

With respect to the first question presented, as to the lifting of wartime suspension of the Statute of Limitations as applied to the Philippine Islands and all Filipinos, the Court of Claims found in the *Marcos* case that

> "The logical date to select as lifting the suspension of the Statute of Limitations under the circumstances * * * is the day of the formal surrender of the Japanese, September 2, 1945."

With respect to the second question presented, that of fixing the time when petitioners' claimed accrued, the Court of Claims found in each case (R. 4, 8, and 12) that

> "plaintiff's cause of action accrued during the period of wartime suspension of the Statute of Limitations."

With respect to the third question presented, as to whether the Statute of Limitations was tolled during the time claims were pending before the Army Claims Service, the Court of Claims found, in the *Flaviana Tan* case, that the Army Claims Service

> "was established by General MacArthur as commander in chief of the United States Army Forces in the Far East, pursuant to a sub-delegation by the War Department of the powers conferred on the President in the First War Powers Act, 55 Stat. 839, 50 U.S.C. Sec. 611."

The Court of Claims stated that the Statute is tolled "where Congress had specifically provided an administrative procedure to be used in settling claims" but that the instant cases "are distinguishable because of the absence of such a statutory provision" and thus fall within the rule that the Statute is not tolled "during the period a claim is under consideration by an administrative agency."

**Specifications of Errors To Be Urged**

The Court of Claims erred:

1. In selecting September 2, 1945, marking the formal surrender of Japan, as the date for lifting wartime suspension of the Statute of Limitations for all Filipinos.

2. In holding that petitioners' claims accrued during the period of wartime suspension of the Statute of Limitations.

3. In holding that the First War Powers Act, insofar as it provides for the settlement of claims arising by reason of irregular procurements, fails to toll the Statute of Limitations with respect to such claims.

## Reasons For Granting the Writ

### I

A—SEPTEMBER 2, 1945, DID NOT MARK THE LEGAL CESSATION OF HOSTILITIES.

The Court of Claims fixed September 2, 1945, as the "logical" date for lifting wartime suspension of the Statute of Limitations for the people of the Philippine Islands.

September 2, 1945, marked the relinquishment of sovereignty by Japan. It did not mark the legal cessation of hostilities as fixed by the political department of our Government.

Legal cessation of hostilities was fixed as occurring on December 31, 1946, by Proclamation #2714 of the President of the United States, included in the Appendix, *infra*, p. 14:

> "The Congress and the President are the constitutional judges of states of war and peace, and their decisions should be abided in patience by people and the courts." *U. S.* v. *Oglesby Grocery Co.*, 264 F. 691 (rev. on other grounds, 41 S. Ct. 306, 255 U.S. 108, 65 L. ed. 535).

See also,

*The Protector*, 12 Wall. (U. S.) 700, 20 L. ed. 463;
*Ex parte Givins*, 262 F. 702;
*Kneeland-Bigelow Co.* v. *Michigan Central R. Co.*, 174 N.W. 605, 207 Mich. 546;
*U. S.* v. *Tubig*, 3 Philippine 244.

B—SEPTEMBER 2, 1945, IS NOT THE "LOGICAL" DATE TO SELECT AS LIFTING WARTIME SUSPENSION OF THE STATUTE OF LIMITATIONS FOR THE PEOPLE OF THE PHILIPPINE ISLANDS.

The Court of Claims selected September 2, 1945, as the "logical" date for terminating wartime suspension of the

Statute of Limitations for the people of the Philippine Islands.

While the relinquishment of sovereignty by Japan in the impressive ceremony on the deck of the battleship "Missouri" marked the high point in public consciousness of the floodtide of war, it is a fact that actual fighting continued in the Philippine Islands after that occasion, and that considerable recession was necessary before the people of the Phillipine Islands, who had felt the full impact of war a few short months before, could work themselves out of damage, destruction, and other internal war-created disruptions and disabilities to a point where normal intercourse and communications could be considered as having been restored. The fact that some mail service to the United States was resumed, presumably by the United States, carries no implication that the people of the Philippine Islands had recovered in sufficient degree to use such service.

Logic emphasizes cause; it should not, however, disregard effect. Japan's surrender eliminated the source of aggression; it did not serve to immediately terminate the effects. The physical disabilities resulting from war continue after the last gun is fired; the political department, therefore, does not immediately proclaim the cessation of hostilities.

In urging that December 31, 1946, the effective date of the President's proclamation of the cessation of hostilities, is the "logical" as well as the "legal" date to select as lifting wartime suspension of the Statute of Limitations, we submit the opinion of Chief Justice Chase, as expressed in *The Protector,* supra, at p. 701:

> "Acts of hostility • • • occurred at periods so various, and of such different degrees of importance, and in parts of the country so remote from each other, • • • that it would be difficult, if not impossible, to

> say on what precise day it began or terminated. It is necessary, therefore, to refer to some public act of the political departments of the government to fix the dates."

See also *Ludecke* v. *Watkins* (1948), 335 U.S. 160, in which this Court said, p. 166:

> "Nor does law lag behind common sense. War does not cease with a cease-fire order, and power to be exercised by the President such as that conferred by the Act of 1798 is a process which begins when war is declared but is not exhausted when the shooting stops."

This Court cited *U. S.* v. *Anderson*, 9 Wall. 56, 70, 19 L. Ed. 615; *The Protector, supra; McElrath* v. *U. S.*, 102 U.S. 426, 438, 26 L. Ed. 189; *Hamilton* v. *Kentucky Distilleries & Warehouse Co.*, 251 U.S. 146, 147, 40 S. Ct. 106, 112, 64 L. Ed. 194; and continued, p. 168,

> " 'The state of war' may be terminated by treaty or legislation or Presidential proclamation. Whatever the mode, its termination is a political act. Id. Whether and when it would be open to this Court to find that a war though merely formally kept alive had in fact ended, is a question too fraught with gravity even to be adequately formulated when not compelled."

C—THE COURT OF CLAIMS LACKED AUTHORITY TO "SELECT" ANY DATE, OTHER THAN THE LEGAL DATE FIXING THE CESSATION OF HOSTILITIES, AS LIFTING WARTIME SUSPENSION OF THE STATUTE OF LIMITATIONS.

War is a political function; its dates of origin and termination are fixed by the political departments of our Government.

The Court of Claims, in "selecting" a "logical" date of its own choosing, other than the "legal" date fixed by the President, for the cessation of hostilities and the

consequent lifting of wartime suspension of the Statute of Limitations for all the people of the Philippine Islands, usurped its authority in the sense that it was thus prescribing an over-all limitation of its own jurisdiction to afford a remedy.

Extinctive prescription, as by limitation, is a political function. In suspending such prescription during war, this Court has consistently adopted the dates of origin and termination fixed by the political departments. Congress has had ample time in which to express disagreement with this practice but has not done so.

One purpose of the Statute of Limitations is to fix a time for universal application as a guide to future conduct. The adoption by this Court of the date of cessation of hostilities as fixed by a political department furthered that purpose. The decision of the Court of Claims, proclaming, *ex post facto*, a date of its own selection, applicable to all the people of the Philippine Islands, defeats that purpose.

D—EXTRAORDINARY CIRCUMSTANCES SURROUNDING PHILIPPINE CLAIMS MUST BE GIVEN WEIGHT IN DETERMINING THE "LOGICAL" DATE FOR TERMINATING WARTIME SUSPENSION OF THE STATUTE OF LIMITATIONS.

The Court of Claims having used the word "logical" as the basis for the selection of a date for the lifting of the wartime suspension of the Statute of Limitations, we may be justified in acquainting this Court with the following circumstances:

On July 10, 1950, the Court of Claims rendered a decision in *Isidro Victorio* v. *The United States* (No. 49541), 91 F. Supp. 748, in effect denying that so-called Philippine Army and guerrilla claims could be asserted against the United States. On the basis of this decision, a large num-

ber of claimants and their counsel withheld action. Two of the instant claims were in that category.

On February 5, 1952, the Court of Claims, in the *Marcos* decision, *supra,* held that, for all wartime claims of Filipinos against our Government, the period fixed by the Statute of Limitations expired on September 2, 1951.

On July 15, 1952, the Court of Claims reversed its earlier position in the 1950 *Isidro Victorio* decision, holding such claims to be compensable by the United States, and granted a rehearing. (106 F. Supp. 182).

Conceivably, the result of the rehearing may be the allowance of claims in the same category. Such a decision, however, will come at a time when, under the ruling of the Court of Claims on the Statute of Limitations, the cases which had been withheld on the strength of the first *Isidro Victorio* decision will be barred, and claimants in such cases will thus be deprived of their day in court.

## II

### THE INSTANT CLAIMS ACCRUED ON DISPOSITION BY THE ARMY CLAIMS SERVICE, AND NOT DURING WARTIME SUSPENSION OF THE STATUTE OF LIMITATIONS.

The Court of Claims held that petitioners' claims accrued "during the period of wartime suspension of the Statue of Limitations" (R. 4, 8, and 12). Obligations customarily mature on a set date; however, the Court of Claims did not specify date or act.

The obligations were incurred when Japanese armed forces were overrunning or had overrun the Philippine Islands. Petitioners supplied American, Filipino, and guerrilla forces with watercraft, supplies, and currency. Under the conditions prevailing at the time the obligations were incurred, there was and could be no determination as to

who owed what, or when and how it would be paid. The facts appear to be without a parallel in legal recordings.

The Army Claims Service was established with authority derived from statute, as hereinafter explained, to receive, determine, and dispose of claims arising from such irregular procurements. There were clarifications of its authority extending into 1946.

Claims were invited but the suppliers could not immediately present their claims. Aside from the physical disabilities resulting from war, hereinbefore referred to, there were war-created difficulties in preparing claims. Supplies had been delivered at personal risk, and receipts, if any, had been destroyed to avoid the punitive measures taken by the Japanese. Officers and men who had received the supplies had died in military action or as prisoners of war. The suppliers had suffered death, dislocation, and impoverishment. The obtaining of proof was a slow process; many thousands of claims were not filed with the Army Claims Service until 1948 and 1949.

The decision of the Court of Claims that petitioners' claims accrued "during the period of wartime suspension" is in conflict with its decision, April 3, 1951, in *Teopisto Dino* v. *The United States*, 119 C.Cls. 307, involving a claim for supplies allegedly furnished to a guerrilla unit in the Philippines during World War II. The Court of Claims stated, p. 309,

> "In our opinion the motion to dismiss must be sustained. The document which plaintiff has filed in this court appears on its face to be a claim for payment for supplies furnished to the armed forces, pursuant to a request of procurement officials of the armed forces of the United States. It seems obvious that this document should have been filed with the proper officials of the War Department. Plaintiff expressly states that no claim for such supplies has been presented by him

to any agency of the Government. ent. He does not state
the name of the procurement official icial who requested him
to deliver the supplies to the Guerri lerrilla Unit, and states
no facts to show the position held by ld by such official or his
authority to purchase or to take ke such property. In
these circumstances the court canno annot hold on the basis
of the document filed, that the fac facts alleged establish
a contract either express or implied plied, or a taking of his
property by an authorized official o al of the United States
which would entitle him to judgmen gment in this court for
the amount claimed. The facts set set forth by plaintiff
fail to show that there has been a n a refusal by the au-
thorized officials of the United Sta States to pay him for
the property which he claims to h o have furnished, and
even if there arose from the transa nsaction a contract ex-
press or implied, the facts alleged ed show no more than
that plaintiff has not yet been paid paid for such property
and such facts do not show a breac each of contract."

The decision of the Court of Claims ns in the instant cases is also in conflict with its decision in *Sco Scott* v. *United States*, 18 C.Cls. 1, in which it held that a clai laim by or against the United States, p. 7,

> "does not become a claim within in the meaning of the law until there has been, on the par art of the Government some authoritative demand for pa payment, or a refusal to allow the credit, and only from m the time of such de- mand or refusal does the statute b e begin to run."

It is submitted that no date of accr crual existed or could exist until the question of whether t there was an obliga- tion was decided in each case by the A Army Claims Service. Indeed, the authority of the Army Clai aims Service to "mod- ify or amend or settle claims * * * irr rrespective of the time or circumstances of the making of or r the form of the con- tract" (Executive Order No. 9001, Dec. c. 27, 1941, 6 Fed. Reg. 6787), was itself recognition of the fac act that such accounts were "in suspense" pending determina nation.

## III

THE ARMY CLAIMS SERVICE WAS ESTABLISHED BY VIRTUE OF EXPLICIT STATUTORY AUTHORITY TO DISPOSE OF THESE CLAIMS, HENCE THE STATUTE OF LIMITATIONS WAS TOLLED UNTIL DISPOSITION WAS MADE OF THEM BY THAT SERVICE.

The source of statutory authority of the Army Claims Service to settle irregular claims is not in dispute. It was the First War Powers Act of 1941 (Act Dec. 18, 1941, Ch. 593, 55 Stat. 838), the applicable portions of which are supplied in the Appendix. Under this Act, the President was empowered to authorize any department to make, amend, or modify contracts without regard to the provisions of law relating to the making, performance, amendment or modification of contracts.

The Court of Claims, in the *Flaviana Tan* decision, *supra*, held, in effect, that the First War Powers Act is not a statutory provision for an administrative procedure to be used in settling claims arising out of requisitioning. In the same decision, the Court concedes that the Statute of Limitations is tolled during the period when claims are pending before an administrative agency if there is statutory provision for such a procedure.

We fail to follow the distinction drawn by the Court of Claims.

The cases cited by the Court in the *Flaviana Tan* case, in support of its position that the Statute of Limitations is not tolled during the period a claim is under consideration by an administrative agency, deal with the handling of routine government obligations incurred in a regular manner.

Obviously, the Army Claims Service was set up by subdelegation of the President's power to consider claims of a particular and extraordinary nature arising under war con-

ditions in the Philippine Islands. Such claims were not susceptible of routine consideration and disposition by an ordinary administrative agency; statutory authority was necessary to consider and dispose of such claims "without regard to provisions of law" relating to ordinary contracts. The First War Powers Act provided that authority.

We submit that, within the rule laid down by the Court of Claims in the *Flaviana Tan* decision and elsewhere, the Statute of Limitations was tolled during the period claims were being considered by the Army Claims Service, an agency stemming from the statutory provisions of the First War Powers Act.

**Conclusion**

The decisions of the Court of Claims were incorrect and the questions involved are of such general importance as to require an authoritative ruling by this Court.

WHEREFORE, it is respectfully submitted that this petition for writ of certiorari should be granted.

ERNEST SCHEIN,
HENRY M. KANNEE,
*Attorneys for Petitioners,*
*Transportation Building,*
*Washington, D. C.*

October, 1952.

## APPENDIX

### STATUTES INVOL

*28 U. S. C. Sec. 2501:* (Statute of Lim ons):

"Every claim of which the Court diction shall be barred unless the pe laims has juris- or the claim is referred by the Senat thereon is filed, sentatives, or by the head of an execut House of Repre- six years after such claim first accru epartment within

• • • • • • •

*Act December 18, 1941, Ch. 593, 55 S 838:* (First War Powers Act, 1941):

"Title II—Contracts.

"Sec. 611. War contracts e restrictions upon authorization b t from certain

"The President may authoriz esident. agency of the Government exerci y department or nection with the prosecution of t functions in con- cordance with regulations presc war effort, in ac- for the protection of the interest by the President to enter into contracts and into a the Government, cations of contracts heretofore o dments or modifi- to make advance, progress and ot reafter made and without regard to the provisions payments thereon, making, performance, amendme aw relating to the contracts whenever he deems or modification of facilitate the prosecution of the ch action would ch. 593, title II, Sec. 201, 55 Stat. r" (Dec. 18, 1941, ).

### PROCLAMATION INV VED

Proclamation by the President of the mation No. 2714, 12 F. R. 1, of Dec ited States, Procla- ber 31, 1946:

"Although a state of war still e sts, it is at this time possible to declare, and I find it to in the public inter- est to declare, that hostilities hav terminated.

"NOW, THEREFORE, I, HARRY S. TRUMAN, President of the United States of America, do hereby proclaim the cessation of hostilities of World War II, effective twelve o'clock noon, December 31, 1946."

(4404)